HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Misc. Application No.701 of 2001

{Old No.5713/1997}

Munendra Nath Mishra
S/o Sri Madan Mohan Mishra
R/o B-22/153- 11
Vinayaka, Varanasi ……Applicant

Versus

1. State of Uttaranchal
2. Prestige Light Ltd.
   Registered Office Adersh Market
   Tilak Marg, Rishikesh, Dehradun
   Through its Manager – Director
   Sri M. K. Goyal S/o Sri Hoshiyar Singh
   Adersh Market, Tilak Marg
   Rishikesh, District Dehradun …….Respondents

Hon'ble J. C. S. Rawat, J.

1. Heard Ms. Prabha learned counsel for the applicant and Sri G. S. Sandhu learned A.G.A. for the State. None appeared for the respondent No.2 despite service.

2. This petition has been filed for quashing criminal complaint No.561/2005 and order dated 20.9.1995 passed by Civil Judge(J.D.), Rishikesh, Dehradun under section 138 Negotiable Instrument Act.

3. Brief facts of the case are that the respondent No.2 used to supply the electrical goods to the applicant. On 21.1.1995 the respondent No.2 promised to send the electrical goods. In this regard, the applicant sent two cheques by hand to Sri R. K. Saxena, who is the Manager of the said company-respondent No.2. The cheques were issued in favour of the respondent No.2. Before receiving the goods sent by the respondent No.2, the applicant sent a letter to the bank concerned asking the bank not to cash said cheques. The cheques were dishonoured and the notice was given in this regard.

Thereafter, the respondent No.2 filed a complaint before the Civil Judge (J.D.), Rishikesh against the applicant under section 138 Negotiable Instrument Act. Thereafter, the Magistrate took cognizance against the applicant vide its order dated 20.9.1995. Feeling aggrieved by this, the applicant preferred this petition.

4. The learned counsel for the applicant contended that the respondent No.2 sent the electrical goods on 2.1.1995 and before receiving the articles sent by the respondent No.2, the applicant sent a letter to the bank concerned on 20.10.1994 asking the bank not to cash the cheques in favour of the respondent No.2. However, the said cheques were dated 7.10.1994 and 15.10.1994. The learned counsel for the applicant contended that since the specific reasons were given in the letter for non-payment of the said cheques, hence the section 138 Negotiable Instrument Act cannot be applied. The learned A.G.A. refuted the contention. It is well settled position of law that the disputed facts cannot be decided while exercising jurisdiction under section 482 Cr.P.C. So far as the specific reasons given in the letter for non-payment of the said cheques are concerned, it can only be ascertained by the trial court.

5. The High Court under Section 482 Cr.P.C. should not interfere with the order of the trial court unless there are strong reasons to hold that in the interest of justice and to avoid abuse of process of the court the cognizance against the accused needs to be quashed. The power of this Court under section 482 Cr.P.C. is very limited. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to this Court to

quash the same in exercise of the inherent powers under section 482 Cr.P.C. It is not, however, necessary that there should be meticulous analysis of the case by the Magistrate to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made by the witnesses that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by this Court. The High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court. **{See State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151}.**

6. It has been held in **M. Narayandas Vs. State of Karnataka 2004 Cri.L.J. p/822** that it is settled law that the power to quash a criminal proceeding must be exercised very sparingly and with circumspection. It must be exercised in the rarest of rare cases. It is also settled law that the court would not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint. The Court also cannot inquire whether the allegations in the complaint are likely to be established or not.

7. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to

act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

8. In view of the aforesaid discussion, the petition is devoid of merit. Therefore, the petition is dismissed.

Dated 12.8.2005 **(J. C. S. Rawat, J.)**

LSR